

REMARKS

Reconsideration of this application in view of the above amendments and following remarks is respectfully requested. Claims 160-170 are now pending. Claim 1 has been canceled by way of this amendment (claims 2-159 were previously canceled). Claims 160-170 are new.

By Office Action mailed June 24, 2004, and pursuant to 35 U.S.C. §121, the Examiner has entered a Restriction Requirement between the various compounds that fall within claim 1. In short, the Examiner considers claim 1 to include a plurality of patentably distinct compounds, too numerous to list individually. (In this regard, Applicants note that claim 1 as originally filed did not recite any specific structure, but instead broadly recited "ion modulating compounds" that block certain cardiac currents.)

In response to the Restriction Requirement, Applicants have canceled claim 1 and presented new claims 160-170. These new claims specifically recite a chemical genus (claim 160), various sub-genuses thereof (claims 161-169), and compositions comprising a compound of any one of claims 160-169 (claim 170). Support for new claims 160-170 may be found throughout the specification, including pages 24-36, as well as in original claims 49-59. Thus, no new matter has been added by way of these amendments.

It should be noted, however, that new claims 160-170 are of narrower scope than original claims 49-59. During prosecution of this application, certain prior art references have come to Applicants' attention, which references were listed in the Information Disclosure Statement filed October 28, 2004, as well as in the Supplemental Information Disclosure Statement (IDS) submitted herewith. In this regard, new claim 160 omits the embodiment wherein X is a direct bond, and requires that the R₁ and R₂ moieties be taken together to with the nitrogen to which they are attached to form the ring as depicted by formula (II) of claim 160. In this manner, the compounds of claim 160 are believed to be patentable over the references of which Applicants are currently aware, and thus cited in the accompanying Supplemental IDS. (Of course, Applicants reserve the right to continue prosecution of any canceled or unclaimed subject matter in one or more continuation/divisional applications.)

Lastly, and in view of the addition of new claims 160-170, Applicants are unsure if the Examiner wishes Applicants to pick a specific species for purpose of initial examination. If such an election of species requirement is applicable to the new claims, Applicants hereby elect one of the compounds specifically listed in claim 169; namely, 2-(4-morpholinyl)-1-(3,4-dichlorophenethoxy)cyclohexane. Of course, should the Examiner find this species to be patentable, the search and examination of allowable species will continue until it includes the full scope of the claimed genus.

In view of the above amendments and remarks, consideration and allowance of claims 160-170 is respectfully requested. A good faith effort has been made to place this application in condition for allowance. However, should any further matter require attention, the Examiner is requested to contact the undersigned at (206) 622-4900 to resolve the same.

Respectfully submitted,
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Enclosures: Information Disclosure Statement and PTO-1449

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